

POTENTIAL REFORMS IN REAL ESTATE LAW

The new Austrian government was sworn in on December 18, 2017 and thereby also presented its government program which deals, among other things, with real estate law.

The issues of lease law, condominium law, social non-profit housing law and building law are touched upon under the title "Modernization of the Right of Residence." In addition, a change to laws on operating plants and the Environmental Impact Assessment Act is envisaged.

LEASE LAW

It is planned to introduce a new lease Act which will ensure a "fair reconciliation of interests between tenants and landlords". In this regard, the main aspects include market-based rental costs, the elimination of the so-called "lease aristocracy" (Mietadel) (old rental agreements which can be transferred to new tenants) and the revocation of the prohibition on charging a location premium in "Gründerzeit" quarters. Furthermore, short-term rentals are to be allowed in the future, and more regulations will be eliminated to leave them under the discretion of the contractual parties.

The new government program does not deal with the issue of commercial leases. Apparently, there is no intention to abolish the somewhat paradoxical situation in which business people enjoy the same protection as private tenants.

Attempts to amend Austria's complex system of lease law have repeatedly failed in recent decades. It remains to be seen whether the "Tenancy Law Convention" initiated by the government will be able to untie the Gordian knot.

There is no intention to interfere with existing contracts.

CATCHWORD AIRBNB

In the future, a separate business license is to be required for permission to rent out apartments. It remains to be seen whether this measure will actually succeed in curbing such rentals. International comparisons show private rentals to tourists only decline considerably where the rental of entire apartments is forbidden and there is a threat of imposing (sometimes exorbitantly high) fines (refer to what is being done in Berlin or Santa Monica).

CONDOMINIUM LAW

The basic thrust of the government program is that "ownership is the desired and most cost-effective form of residing". For this reason, living space and investment incentives

are to be created and condominium ownership is to be facilitated. However, it should be pointed out that the government program does not yet include any specific technical details. Plans call for a simplification of the condominium law, especially facilitating decision making between co-owners.

BUILDING ON THIRD-PARTY LAND

Building on third-party land should be made easier. However, the government program does not specify whether or not superstructures (Superädifikate) (buildings on third-party land for a limited time) will be abolished in the future and construction on third-party land will be exclusively regulated in the Building Law Act. This would serve to eliminate uncertainties and facilitate the financing of building on third-party land.

BUILDING LAW AND THE PROTECTION OF HISTORICAL MONUMENTS

The government program talks about harmonizing technical construction standards, and strives to reduce construction costs, amongst other goals. However, this can only be achieved with the cooperation of the federal provinces, in light of the fact that construction laws are under the jurisdiction of the individual provinces.

The Federal Act on the Protection of Monuments is to be updated and support given to the debureaucratization of regulations applying to developers.

INDUSTRIAL PLANT LAW

Several points in the government program refer to the simplification and acceleration of procedures. For example, this should be accomplished by an increase in notification procedures instead of approval procedures (and thus the creation of more exemptions) as well as a "one stop shop" i.e. a concentration of approval and licensing procedures for building projects and operating plants.

With respect to the environmental impact assessment procedures, a business location attorney should represent the interests of the business community in the future. This fulfills the demands of the Federal Economic Chamber. According to a press release issued by the Federal Economic Chamber, such a business location attorney should be based in the organization, and as an economic expert take account of the economic benefits of a project. However, it is questionable whether the necessity for public authorities to take account of economic benefits in addition to legal and technical considerations will actually lead to faster processing. Moreover, it is also questionable whether the introduction of such criteria to the Environmental Impact Assessment Act is compliant with EU directives.

In fact, an increase in the number of available official experts, a general strengthening of resources available to public authorities and new foreclosure regulations could result in a real speeding up of procedures.

DIGITALIZATION

The government program devotes a separate chapter to the topics of “innovation and digitalization”. The creation of comprehensive legal certainty is designed to ensure the development of new business models and the use of new technologies (e.g. blockchain).

However, consideration is apparently not yet being given to the application of blockchain for the land registry, as is currently being implemented in Sweden.

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